

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

Bryan, Texas

**SANDERSON FARMS, INC.
(PROCESSING DIVISION) AND
SANDERSON FARMS, INC.
(PRODUCTION DIVISION) 1/**

Employer

and

Case No. 16-RC-10102

**TEAMSTERS, GENERAL DRIVERS,
WAREHOUSEMEN AND HELPERS,
LOCAL UNION 968, AFFILIATED WITH
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS 2/**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:3/

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.4/

2. The labor organization involved claims to represent certain employees of the Employer. 5/
3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act. 6/
4. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All distribution drivers, live-haul drivers including spotters, feed mill drivers and loader operators.

EXCLUDED: All other employees, including production and maintenance employees, agricultural employees, clerical employees, guards, and supervisors as defined by the Act.

DIRECTION OF ELECTION 7/

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an

economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the Teamsters, General Drivers, Warehousemen and Helpers Local Union 968, affiliated with International Brotherhood of Teamsters.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list containing the full names and addresses of all eligible voters which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); and *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the [NLRB Region 16 Resident Office, Lyric Center, Suite 550, 440 Louisiana Street, Houston, Texas 77002-2649, on or before May 5, 1999](#). No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by May 12, 1999.

DATED April 28, 1999, at Fort Worth, Texas.

/s/ Michael Dunn
Michael Dunn, Regional Director
NLRB Region 16

1. At the hearing, the petition was amended to reflect the Employer's correct name. Both Sanderson Farms, Inc. (Processing Division) and Sanderson Farms, Inc. (Production Division) are wholly owned subsidiaries of parent corporation, Sanderson Farms, Inc. Sanderson Farms, Inc. provides administrative services for both subsidiaries. These subsidiaries share the same board of directors, the same retirement plan and 401(k) plan, the same stock option plan, the same vacation and holiday policy, and the same health care plan with their parent. In addition, on at least two occasions within the past six months, the Production subsidiary has used the Processing subsidiary's employees when additional manpower was needed. When such borrowing of employees is needed, the borrowing subsidiary reimburses the other for the cost of these employees. In addition, employees who have transferred from one subsidiary to the other retain the same level of benefits as they enjoyed while employed by the other subsidiary and do not serve a probationary period upon their transfer. The subsidiaries have also shared tractors. The subsidiaries have common fleet supervision and insurance and use a common truck shop for maintenance and servicing of all trucks owned by either subsidiary.

The Sanderson Farms, Inc. enterprise is a vertically integrated poultry producer, which is responsible for all aspects of the production, processing, marketing, and distribution of poultry products. The operations of its Production and Processing subsidiaries are interrelated as the Production subsidiary produces the poultry which it, in turn, sells to the Processing subsidiary. The Production subsidiary is responsible for the breeding of breeder stock, hatching fertile eggs into chickens, and delivery of the chickens to the Processing subsidiary. The process begins in the Production subsidiary's hen farms where fertile eggs are harvested and then transported to the Production subsidiary's hatchery where the eggs are hatched. The chicks are then transported to farms owned by independent contractors. The independent contractors feed the chicks with feed produced by the Production subsidiary at its feed mill and delivered by the Production subsidiary's feed mill drivers. After the chickens reach maturity, they are delivered to the Processing subsidiary where they are slaughtered, prepared for delivery and delivered to the Production subsidiary's customers, restaurants and grocery stores.

The Board uses the following criteria to determine single employer status: (1) common ownership; (2) interrelation of operations; (3) common management; and (4) centralized control of labor relations. *Radio Union v. Broadcast Service of Mobile*, 380

U.S. 255 (1965). However, not all of the above-listed factors must be present. *Denart Coal Co.*, 315 NLRB 850 (1994), enfd. 64 F.3d 661 (4th Cir. 1995). The Board has found a parent and subsidiary to be a single employer when their operations are highly integrated. *Bayside Enterprises, Inc.*, 216 NLRB 502 (1975).

Because the record evidence reveals that there is common ownership, significant interrelationship and integration, I find that Sanderson Foods, Inc. (Processing Division) and Sanderson Foods, Inc. (Production Division), hereinafter collectively referred to as the Employer, constitute a single employer with respect to the employees described in the petition. *See, e.g., South Prairie Construction Co. v. International Union of Operating Engineers*, 425 U.S. 800 (1976).

2. The Petitioner's name appears as amended at hearing.
3. Both parties filed briefs that were duly considered.
4. The parties have stipulated, and I find, that Sanderson Farms, Inc. (Processing Division) and Sanderson Farms, Inc. (Production Division) are Mississippi corporations with places of business located in or around Bryan, Texas (the only facilities involved herein) and are engaged in the business of poultry processing. During the past twelve months, a representative period, the Employer in the course and conduct of its business operations, purchased and received goods valued in excess of \$50,000 at its Bryan, Texas facilities directly from points located outside the State of Texas.
5. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
6. The Petitioner seeks to represent the Employer's 13 or 14 live-haul drivers, 13 distribution drivers and 13 feed mill drivers in a single unit. In its brief, Petitioner for the first time asserts that the Employer's two "spotters" or pull-up drivers are included in the Employer's live-haul drivers classification. The Employer contends that the live-haul drivers are agricultural employees who are exempt from the Act and, accordingly, cannot be included in any bargaining unit. In the alternative, the Employer contends that if the live-haul drivers are included, a bargaining unit comprised of live-haul drivers, distribution drivers and feed mill drivers is inappropriate and that appropriate bargaining units would be separate units of feed mill drivers, distribution drivers and live-haul drivers and loader operators. Loader operators report to the Employer's live-haul office and work on the farms of the independent contractors. The loader operators work alongside the catching crews, who collect the chickens and load them into cages. Of the four catching crews, one comprises the Employer's employees. The other three crews are contract labor. The loader operators use a forklift to take empty cages to the chicken house where the catching crews load the cages with chickens. After the cages are full, the loader operators use forklifts to transport the full cages to the live-haul trailers.

The Employer's feed mill is located in Robertson County, Texas. Its hatchery is 35 miles away from the feed mill and is located in Brazos County, Texas. The

Employer's truck shop, live-haul facility and office, and its production facility share a 300-acre tract of land located 3 ½ miles from its hatchery. The Employer maintains three break rooms on its 300-acre tract and has no policy prohibiting any employees from using any of the break rooms. All of the Employer's trucks are serviced and maintained at its truck shop. Gas pumps are also located on the 300-acre tract for the use of drivers. The Employer also maintains a gas pump at its feed mill.

The record reflects numerous instances of employee interchange between the Employer's Processing and Production Divisions. Within the past three to four years, the Employer transferred four distribution employees to its Processing division. Further, the record reflects that the Employer has permanently transferred employees between its feed mill and live haul departments. The employees who were transferred retained their benefits and did not serve an additional probationary period in their new positions. On two occasions within the past six to eight months, the Production Division used a distribution driver to haul eggs from its Brazos division to its Brazos-Mississippi division. About two weeks prior to the hearing, the Employer used three or four live-haul drivers as distribution drivers.

As referenced above, the Employer manufactures its own feed. It distributes this feed to independent contractor farms that raise chickens for the Employer. The feed mill drivers deliver the feed to farms located in eight different counties. Feed mill drivers earn an hourly wage of \$8.95 per hour and receive overtime pay for hours worked in excess of 40. They report to feed delivery supervisors. When performing their duties, they drive trucks that are commonly referred to as "18 wheelers." These trucks are outfitted with an auger and they load their trucks from silos on the feed mill property and unload the feed into silos located on the contractor's farm. They have a commercial driving license. When performing their duties, they go to the same farms where the live-haul drivers go, as well as to farms where the hens and pullets are kept. The feed mill drivers do not go to the processing plant as part of their duties. Feed mill drivers work either a day or night shift and each shift has different supervision.

The Employer's live-haul drivers earn \$9.80 per hour, but do not earn overtime because the Employer has treated them as agricultural employees. The live-haul drivers work primarily out of the live-haul area which is located on the same 300-acre tract as the Employer's processing plant. They do not travel to the Employer's hatchery or processing plant. Rather, they travel from the live-haul area to the contracting farms. They drive trucks commonly referred to as "18 wheelers" and transport the chickens from the contractors' farms to the live-haul shed located near the processing plant. The live-haul drivers do not load the chickens. After the chicken catchers catch the chickens and the loader operator loads the cages into a trailer using a forklift, the live-haul drivers hook up their trucks to the trailer and transport the chickens to the Employer's live-haul shed. After they make their deliveries, the live-haul drivers connect a trailer containing empty cages to their trucks and begin again. They are covered by Department of Transportation regulations, but do not keep a Department of Transportation log. The live-haul drivers are supervised by two live-haul supervisors and share common supervision with the feed mill drivers at the Production Division Manager level.

The Employer's "spotters" or "pull-up" drivers transport the chickens from the live-haul shed to the back of the processing plant. Processing plant personnel unload the coops into the back of the processing plant. Spotters have on occasion filled in for live-haul drivers and, like live-haul drivers, earn \$9.80 per hour. There is no record evidence concerning the specific supervision of the spotters, the shifts they work, and the equipment they use when performing their duties.

The Employer employs four loader operators who are compensated on an incentive basis. They work alongside the chicken catchers and work on the Employer's first and third shifts. They report to the same supervisors as the live-haul drivers and work out of the live-haul office. Their duties are to unload empty cages, transport them into the chicken house and transport full cages back and load them on the live-haul driver's trailer. At the hearing, the Employer took inconsistent positions concerning these employees. Initially, the Employer offered to stipulate that these loader operators should be excluded from the unit, but later argued that they should be included in a bargaining unit if the live-haul employees were deemed to be employees under the Act. It maintained its latter position on brief. The Union has not taken a position regarding the appropriateness of these employees in the bargaining unit.

The Employer employs 13 distribution drivers who transport processed chickens to the Employer's customers. These drivers earn \$10.15 per hour, plus overtime. The record is unclear on the actual distances driven by the distribution drivers, but they have driven as far as Laredo and Corpus Christi, Texas. On occasion, they travel on overnight trips. These drivers report to the distribution supervisor. Like the other drivers in the petitioned-for unit, they drive "18 wheelers". They keep Department of Transportation logs, receive Department of Transportation training and have commercial driving licenses. The record is unclear whether these drivers actually load their vehicles or if their vehicles are loaded by a forklift operator. There is record evidence that they inspect their load for completeness before leaving. They are responsible for unloading their trucks and for rotating the product at the location of the Employer's customer. They do not drive their trucks to the farms of the Employer's contractors or to the feed mill.

The Employer also employs two egg drivers and two chick drivers. These drivers earn \$9.50 an hour and \$9.80 an hour respectively, but do not receive overtime pay because the Employer considers them agricultural employees. These drivers report to the hatchery supervisors. The Petitioner does not seek the inclusion of these drivers in the unit herein and the Employer has not argued that these drivers should be included in an appropriate bargaining unit. Based thereon, I find these drivers are properly excluded from any unit found appropriate herein.

Finally, the Employer also employs one wood chip driver and two spray and wash drivers. These drivers work out of the hatchery, under hatchery supervision, but perform their job duties at the feed mill. The Employer has treated these drivers as agricultural employees. The Petitioner does not seek to represent these employees and the parties stipulated to exclude them from any appropriate bargaining unit. Based on the parties'

position with respect to these employees, I find they are also properly excluded from any unit found appropriate herein.

The Status of Live-Haul Drivers

In its brief, the Employer argues that the Fifth Circuit in *Coleman v. Sanderson Farms, Inc.*, 629 F.2d 1077 (5th Cir. 1980) determined that live-haul drivers are not “employees” under the Act because they are agricultural laborers. The Employer’s reliance on *Coleman* is misplaced. *Coleman*, a Fair Labor Standards Act case, was overruled by the Supreme Court in *Holly Farms Corp. v. NLRB*, 116 S.Ct. 1396 (1996). In *Holly Farms*, the Supreme Court noted the conflict in the circuit courts and determined that live-haul employees, including drivers, are employees as defined in Section 2(3) of the Act because their work of collecting chickens for slaughter is an activity serving the company’s processing operations.

In accordance with the Supreme Court’s *Holly Farms* ruling, I find the live-haul drivers to be employees as defined in Section 2(3) of the Act.

Community of Interest

It is well settled that in cases concerning a question of representation the unit sought by Petitioner must be an appropriate unit, regardless of whether other units are also appropriate. *Century Moving and Storage*, 251 NLRB 671, 679 (1980), citing *Pilot Freight Carriers, Inc.*, 223 NLRB 286 (1976). When determining whether a petitioned-for unit is appropriate, the Board considers whether the employees in the unit have a sufficient “community of interest”. *Swift & Co.*, 129 NLRB 1391 (1961); *United States Steel Corp.*, 192 NLRB 58 (1971). Factors to be considered in making such a determination include: (1) degree of functional integration; (2) common supervision; (3) nature of employee skill and function; (4) interchangeability and contact among employees; (5) work situs; (6) general working conditions; and (7) fringe benefits. In determining whether a petitioned-for unit is appropriate, the Board has also found the petitioner’s request to be a relevant consideration. *Marx Oxygen Company of Alabama*, 147 NLRB 228 (1964).

The record establishes that the Employer’s live-haul drivers, feed mill drivers and distribution drivers share a sufficient community of interest. The petitioned-for drivers share general working conditions and are functionally integrated as all drive “18 wheelers” and transport the Employer’s product through various stages of production and processing. As previously noted, the feed mill drivers transport the Employer’s processed feed to independent contracting farms which, in turn, use the feed to nourish the growing chickens. After the chickens reach maturity, the chickens are gathered by the chicken catchers and placed into cages. The loader operators then transport these cages by forklift and place them in the trailer of the live-haul truck. The live-haul drivers take the chickens to the live-haul shed located on the same 300-acre tract as the Employer’s processing facility. These chickens are then transported by the spotters to the back of the Employer’s processing facility. After the chickens are processed, the

distribution drivers deliver the chickens to the Employer's customers. All drivers are paid on an hourly basis and earn similar wages ranging from \$8.95 per hour to \$10.15 per hour. All receive the same benefits. The live-haul drivers and spotters earn the same wage and receive identical benefits. All of these drivers must have a commercial license and are covered by Department of Transportation regulations. All drivers transport the Employer's product during the production or processing stage. There is record evidence of interchange of drivers as some drivers have been permanently transferred between feed mill and live-haul positions. After their transfer, these drivers kept the same benefits including credit for vacation and were not required to serve an additional probationary period. The record establishes that there has been interchange of equipment and that the Employer services and maintains all trucks at its truck shop located at its processing facility.

On brief, the Employer relies on *DeCoster Egg Farms*, 223 NLRB 884, 886-887 (1976) to argue that the petitioned-for unit is not appropriate. The *DeCoster Egg Farms* case is factually distinguishable from the instant case. First, *DeCoster*, which was reversed on other grounds by *Camsco Produce Co.*, 297 NLRB 905 (1990), concerned a petition in which the union sought a unit of 30 over-the-road and straight truck drivers. The employer therein argued that the petitioned-for unit was not appropriate and that an appropriate unit would include 13 local drivers and six or seven feed drivers along with the over-the-road and straight truck drivers. The Board, while noting the differences between the various classifications the employer sought to include in the unit, reasoned that the petitioned-for unit was appropriate. In a later case, the Board found a unit of local and over-the-road drivers to be an appropriate unit, notwithstanding the fact that the drivers worked different hours and earned different wages. *Gogin Trucking Co.*, 229 NLRB 529, 538 (1977). Finally, it should be noted that the Board has a long-standing policy of not compelling unions to seek to represent the "most comprehensive grouping." *MC-HOR-HAN Trucking Co., Inc.*, 166 NLRB 700 (1967).

Although the four loader operators are compensated on an incentive basis, they share a sufficient community of interest with the feed mill drivers, live-haul drivers and distribution drivers to warrant inclusion in the unit. The job of the loader operators is functionally integrated with the job of the drivers in that they take the chicken cages to the live-haul drivers' trucks. The live-haul drivers, in turn, deliver the chickens to the live-haul shed that is located on the same 300-acre tract as the Employer's processing plant. They also share common supervision with the live-haul drivers and share common benefits with the other drivers sought to be included in the unit.

For these reasons, I find that the live-haul drivers, spotters, feed mill drivers, distribution drivers and loader operators share a sufficient community of interest and constitute an appropriate unit.

7. In accordance with Section 102.67 of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

177-2484-1200-0000
177-2484-1201-0000
177-1642-0100-0000
401-2575-7000-0000
401-7550-0000-0000
420-2903-0000-0000
420-2921-0000-0000
420-7303-0000-0000
440-1760-9167-9200
440-1760-9167-9233